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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/975,171
Filing Date: October 10, 2001
Appellant(s): SEIFERT ET AL.

Michael D. Cushion, Reg. No. 55,094
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7 August 2006 appealing from the Office action mailed 22 March 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,937,396	KONYA	8-1999
6,394,343	BERG et al.	5-2002
6,736,314	COOPER	5-2004
6,032,137	BALLARD	2-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following assertion of facts have gone unchallenged and are considered admitted prior art:

- transaction receipts with identification codes printed thereon
- transaction fees
- overdraft protection

Claim Rejections - 35 USC § 112

Claim 65 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 65 recites a payout card that “is anonymous as to the recipient’s name”. Applicant’s Specification however, merely recites “anonymous payout cards” (Specification, page 6, lines 10-26).

Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 recites an “anonymous payout card” however, the card has identifying information that “includes an account number”. Hence, to one of ordinary skill the card is not anonymous as the account number can be traced back to the name of owner of the account.

Claim 58 is dedicated to processing performed prior to funds being loaded into an account. Therefore, it is not clear to one of ordinary skill how the identity of an agent involved in a recipient receiving said funds can be known.

Claim 58 recites the limitation "the receive transaction" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 60 recites “wherein the payout account is not accessible by the sender”, however this is not clear to one of ordinary skill as claim 1, from which claim 60 depends, discloses a sender loading funds into an account accessible by a recipient.

Claim Rejections - 35 USC § 102

Claims 1-5, 14-21, 31-37, 45-49, and 60 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Konya, U.S. Patent No. 5,937,396.

As per claims 1-5, 14-21, 34-37, and 60, Konya teaches a money transfer transaction comprising:

- loading payout funds at least equal to an amount to be transferred from a sender (or to cover the amount plus a fee) to a recipient into a payout account such that the funds are electronically accessible to the recipient using a payout card issued to said recipient (abstract; figures 6A-7B; column 10, lines 15-61; column 11, lines 10-26; column 12, lines 35-67)
- prior to loading funds in a recipient account, storing card identifying information, associated with a payout card, and payout funds in a host computer system (abstract; figure 1; column 7, lines 38-40)

- receiving input associated with the payout card, comparing the input against data stored in a host computer system and allowing a portion of the transferred funds to be accessed (e.g. debited, dispensed, etc.) if the input is authenticated (figures 7A-B; column 11, lines 10-40)

- a payout card that has been previously issued (figures 7A and B; column 11, lines 20-25)
- storing transaction data on a host computer system wherein the data includes a desired amount of money to be transferred (figures 6A and B)
- a recipient payout account that is not accessible by the sender (column 9, lines 25-37)

Regarding the dispensing of currency (claims 14 and 15) (issuance of a negotiable instrument or cash) to authorized users it is inherent that a user can withdraw an amount from an account less than the amount present.

As per claims 31-33, Konya teaches entering identifying information associated with a card (column 6, lines 42-50), loading funds into a payout account associated with the payout card that correspond to an amount to be transferred (figure 6B) and providing a recipient with a payout card (figure 7B). Regarding the dispensing of currency (claims 32 and 33) (issuance of a negotiable instrument or cash) to authorized users it is inherent that a user can withdraw an amount from an account less than the amount present.

As per claims 45-49, Konya teaches a money transfer system that comprises a host system, a terminal with a card reader for receiving identifying data, and the host system verifying the identifying data prior to loading money

into a recipient payout account (figures 1, 2 and 6A-7B). The host system of Konya also receives, from a sender, and stores card identifying data associated with the payout card (column 6, lines 42-51), and determines whether a receiver is allowed to access funds by comparing card identifying data from a recipient with card data from the sender (figures 7A-B).

Claim Rejections - 35 USC § 103

Claims 6, 22, 38, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konya, U.S. Patent No. 5,937,396 in view of Berg et al., U.S. Patent No. 6,394,343.

As per claims 6, 22, 38, and 50, Konya teaches a method of electronically transferring funds to a recipient using a card (abstract). In order to access transferred money a recipient needs to provide the user with an account code (figures 7A and B). However, Konya does not specifically recite the type of card. Berg et al. teach a smart card for conducting financial transactions (abstract) such as money transfers (column 3, lines 20-67). More specifically, Berg et al. teach a smart card that stores account codes (column 8, lines 37-56). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Konya and Berg et al. in order to allow smart card owners to maintain a secure record of cash transactions ('343, column 8, lines 45-46).

Claims 7-13, 23-29, 39-41, and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konya, U.S. Patent No. 5,937,396 and Berg et al., U.S. Patent No. 6,394,343 as applied to claim 6, 22, 38, and 50 above, and further in view of Cooper et al., U.S. Patent No. 6,736,314.

As per claims 7-13, 23-29, 39-41, and 51-53, Konya teaches a method of electronically transferring funds to a recipient using a card (abstract). In order to access transferred money a recipient needs to provide the user with an account code (figures 7A and B). However, neither Konya nor Berg et al. specifically recite using an account code and a transaction code to authenticate a recipient. Berg et al. teach a method for conducting financial transactions using smart cards (abstract; column 3, lines 20-67; column 8, lines 37-56). Cooper et al. teach a method and system for transferring money using an account code and an identification code (column 7, lines 14-31; column 8, lines 28-58) where said codes are stored on a host computer system (column 7, lines 14-31) and using said codes to authenticate a recipient (column 8, lines 27-53). Cooper et al. also teach transaction fees (column 5, lines 10-33). Regarding printing the identification code on a receipt, the Examiner takes Official Notice that ATMs receiving identification codes at a remotely stored database and printing said identification codes such as account numbers and user names on receipts is old and well known. Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Konya, Berg et al. and Cooper et al. in order to

decrease the potential of fraud by requiring recipients to provide multiple forms of authentication ('314, figure 6).

Claims 10-13, 26-29, 42-44, 54-59 and 61-64 rejected under 35 U.S.C. 103(a) as being unpatentable over Konya, U.S. Patent No. 5,937,396.

As per claims 10-13, 26-29, 42-44 and 54-56, Konya discloses ATM machines, and bank accounts, while transaction fees associated with financial transactions at ATMs and accounts are old and well-known. Hence, Konya at least suggests to one of ordinary skill loading sufficient funds to cover the cost of performing a financial transaction. Further, Konya also teaches a host system verifying a sender's account balance prior to performing a money transfer (figure 6B), and if the account lacks sufficient funds, the sender is allowed to perform another transaction (column 10, lines 37-41). Hence, Konya at least suggests the ability to make a deposit into an account. "Overdraft Protection" (claim 54) is also old and well-known. Konya also teaches calculating transaction fees (column 9, lines 25-36).

As per claim 30, Konya et al. teach a money transfer method and system that comprises initiating and fulfillment terminals (figures 1, and 7A-B). The Konya system further comprises receiving storing transaction and card identifying data at a host computer (figures 6A and B), receiving transaction [card] identifying data (e.g. account number) from a first receive transaction terminal in

communication with a host system and comparing the identifying data (e.g. account balance) against amount of money to be transferred (figures 6A and B). Regarding transaction fees, Konya discloses ATM machines, and bank accounts, while transaction fees associated with financial transactions at ATMs and accounts are old and well-known. Hence, Konya at least suggests to one of ordinary skill loading sufficient funds to cover the cost of performing a financial transaction. Further, Konya also teaches a host system verifying a sender's account balance prior to performing a money transfer (figure 6B), and if the account lacks sufficient funds, the sender is allowed to perform another transaction (column 10, lines 37-41). Hence, Konya at least suggests the ability to make a deposit into an account. Konya also teaches calculating transaction fees (column 9, lines 25-36).

As per claims 57, 58, 63 and 64 Konya teaches a recipient with a previously assigned (e.g. identified with a particular bank or financial institution) payout card (column 11, lines 15-26; column 12, lines 20-30). Therefore, a priori a user is determined as eligible to participate in whatever transactions are available to owners of said payment card (e.g. bill pay, withdrawing funds, balance transfers, receiving funds, etc.)..

As per claims 59, 61 and 62, Konya teaches issuing a payment card to a user who does not previously have one (column 12, lines 20-30). Hence, it would

have been obvious in light of the teachings of Konya for a recipient to have a card issued at the time of the receive transaction.

Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Konya, U.S. Patent No. 5,937,396 in view of Ballard, U.S. Patent No. 6,032,137.

As per claim 65, Konya teaches issuing a payment card to a user who does not previously have one (column 12, lines 20-30). However, Konya does not specifically recite anonymous payout cards. Ballard teaches anonymous payout cards (abstract; column 4, lines 12-19; column 7, lines 4-18). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Konya and Ballard in order to allow users to conduct transactions in private ('137, column 4, lines 15-20)

(10) Response to Argument

CHART MAPPING THE PRIOR ART OF KONYA TO APPLICANT'S BROADEST CLAIM

Payout Funds- Currency dispensed to the Recipient from a Sender's account

Payount Account-Sender's account which is the source of funds

Recipient Payout Card-Card used by Recipient at an ATM to request payout Funds

Loading payout funds-The act of identifying amount to be reserved in a sender account or depositing money into a sender prior to making funds available to a recipient

	CLAIM 1	KONYA- US 5,937,396
1	Loading payout funds, corresponding to at least a portion of a desired amount of money to be transferred from a sender to a recipient, in a payout account associated with a payout card	The **transferred** currency can then be retrieved using a second ATM" (abstract) "This credit is debited from the first account. The system allocates commissions and transaction fees associated with the **transfer**. It should be appreciated that such a transaction card 30 will allow an individual to perform routine banking functions in addition to **electronic currency transfers**." (column 9, lines 29-37) "The amount of currency to be transferred must next be provided to the first computer system. This is accomplished by entering a numeric value through the use of the numeric key pad" (column 10, lines 27-31) "After this information has been transmitted to the main computer, the amount of currency requested **for transfer** is reserved from the first account" (column 11, lines 6-8) "The account number is used to identify the specific account at the bank from which the currency must be debited." (column 11, lines 60-65) Explanation- When the amount of currency to support the transaction is *reserved*, the sender no longer has access to the funds as it is *reserved* for the purpose of debiting by the ATM computer system performing the "send" transaction. Therefore, the Examiner is interpreting the prior art system as reserving the funds are in a *reserved* or payout account, within the sender's account.

		OR "Subsequent to verification, the first computer system examines its database in order to determine if the amount of currency selected for transfer exceeds the current balance of the first account" (column 10, lines 27-30) Explanation- It is inherent that in order to allow the recipient to be able to access funds, the sender must have a corresponding amount of money present in the sender account. Hence, at some point in the past the money had to have been loaded (or deposited) into the sender account .
2	... in a payout account associated with a payout card, such that the payout funds are electronically accessible by the recipient using the payout card	"A second ATM is located and the recipient's transaction card, or second transaction card, is inserted into the card reader thereof in order to begin the session" (column 11, lines 17-20) "The recipient may now instruct the second ATM to dispense the amount of currency which was **transferred**." (column 11, lines 40-43) Explanation- The payout card is associated with the payout account (sender account or reserved account within the sender account) because the source of the funds that the recipient is instructing the second ATM to dispense are from the sender's account (or reserved account).

112 First Paragraph rejection

The Examiner withdraws the 112 first paragraph rejection to claim 65.

112 Second Paragraph rejection

The Examiner withdraws the 112 second paragraph rejection to claims 30 and 58 (lack of antecedent basis).

Claim 58 is directed to actions prior to the loading of funds. To one of ordinary skill there is not recipient until there have been funds to be received. Hence, to one of ordinary skill it is not clear how the payout card is determined eligible to receive funds from the payout account, based on whether or not the card was previously assigned to an agent location, when funds haven't been loaded.

Claim 60 recites "wherein the payout account is not accessible by the sender". Claim 1, from which claim 60 depends, recites "loading payout funds into a payout account". To one of ordinary skill, the sender is the one loading the funds, hence the sender has access to the payout account if only to load funds therein.

Appellant asserts that the sender is not the one "loading the funds" (Appeal Brief, page 10, section 3, lines 4-5). However, this interpretation of claim 1 directly contradicts the teachings of Appellant's Specification (Specification, page 8, lines 18-32).

102(b) rejection

Claims 1-5, 14-21, 31, 34-37, 45-49, and 60

Appellant is of the opinion that the prior art of Konya fails to disclose "loading payout funds, corresponding to at least a portion of a desired amount of money to be transferred from a sender to a recipient, in a payout account associated with a payout card". The Examiner respectfully disagrees. Konya teaches a sender inputting an amount to be transferred (column 10, lines 28-34), determining whether the sender's account balance is sufficient to cover the transaction (column 10, lines 35-40) and

reserving this amount from the sender's account (column 11, lines 4-10) for later debiting (column 11, lines 60-65). When the amount of currency to support the transaction is *reserved*, the sender no longer has access to the funds as it is *reserved* for the purpose of debiting by the ATM computer system performing the "send" transaction. Otherwise, in the Konya teaching, a sender runs the risk of using funds to the point where the sender account balance no longer can support the transfer. Therefore, the Examiner is interpreting the prior art system as reserving the funds in a *reserved* or payout account, within the sender's account. This is similar to rental car companies who block off or reserve an amount on a renter's credit or debit card in order to guarantee payment.

Konya also inherently teachings Appellant's "loading" step as in order to allow the recipient to be able to access funds, the sender must have a corresponding amount of money present in the sender account (column 10, lines 27-30). Hence, at some point in the past the money had to have been loaded (or deposited) into the sender account.

Appellant stresses that Konya cannot read on claim 1 because according to Konya money is not actually transferred from sender to recipient. This is an inaccurate depiction of the prior art. For example, Konya explicitly recites "The system allows currency to be ***immediately transferred*** from a first account to a ATM" (abstract), "The ***transferred*** currency can then be retrieved using a second ATM" (abstract), and "the system will also account for standard exchange rates when currency is ***transferred*** to different countries." (column 9, lines 35-37). Although Konya does not teach transferring

funds *into a recipient's bank account* (column 6, lines 35-40; column 9, lines 25-30), Konya does characterize the act of a sender identifying an amount to be made accessible to a recipient over an ATM network as "transferring" (abstract; column 9, lines 30-38).

Appellant further contends that Konya fails to teach Appellant's claimed method as claim 1 is directed to a *receive* transaction (Appeal Brief, page 11, section 1, lines 1-5). However, according to Appellant's Specification, the sender and not the receiver is the entity who is "loading funds.... into a payout account" (Specification, page 8, lines 18-31), hence Appellant is not accurately describing the claimed method.

Regarding claims 31 and 34, the Konya teaches "requesting via a transaction initiating terminal that the host computer system load payout funds corresponding to at least a portion of a desired amount of money to be transferred..." as Konya teaches using an ATM machine to identify an amount to be reserved from a sender account to a reserved or payout account (column 10, lines 28-41; column 11, lines 1-10).

Claims 14, 15, 32, and 33

Appellant is of the opinion that the prior art fails to disclose "a portion of funds gets loaded into a payout account associated with a payout card and another portion gets dispensed as a negotiable instrument or cash" (Appeal Brief, page 14, second full paragraph, lines 1-6).

Konya specifically teaches that a recipient may be limited by the ATM as to how much can be accessed in a single transaction and that the rest of the transferred money can be accessed in subsequent transactions (column 11, lines 45-47). Hence, the prior art of Konya provides Appellant's requested basis of fact (*Ex parte Levy*, 17 USPQ2d 1461, BPAI (1960)) to support the assertion of inherency (it is inherent to the teachings of Konya that a user can withdraw an amount from an account less than the amount present).

Appellant also asserts that while Konya teaches issuing cash or a negotiable instrument (Appeal Brief, page 15, first full paragraph "Konya recognizes...", lines 5-6) Konya does not disclose issuing both. However, this is not requirement of the claims as claim 15 does not depend from claim 14. It has been held that, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims (*In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)).

Claim 60

Konya teaches reserving an amount from the sender's account (column 11, lines 4-10) for later debiting (column 11, lines 60-65). When the amount of currency to support the transaction is *reserved*, the Examiner contends that a reserve or payout account is created within the sender's account. And, that once this amount is reserved the sender no longer has access to the funds as it is *reserved* for the purpose of debiting by the ATM computer system performing the "send" transaction. This is similar

to rental car companies who block off or reserve an amount on a renter's credit or debit card in order to guarantee payment. Otherwise, in the Konya teaching, a sender runs the risk of using funds to the point where the sender account balance can no longer support the transfer (abstract; column 9, lines 25-37; column 10, lines 28-42).

103(a) rejection

Claims 6-9, 10-13, 22-25, 26-29, 38-41, 42-44 and 50-53, 54-59

Appellant is of the opinion that the combined prior art does not disclose "providing, by a host computer, an account code corresponding to the payout account for transmission to a terminal so that that the terminal may write the account code to the payout card" (Appeal Brief, page 23, section 1, lines 1-4). The Appellant identifies the language of the terminal that *may write the account code to the payout card* (Appellant's emphasis) as the distinguishing feature. However, Examiners have been given clear guidance regarding subject matter prefaced by optional or conditional language, or language of possibility. The MPEP states "language that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation" (MPEP, 2106, section II, C). Hence, what "may" or "may not" be done does not distinguish the claims from the prior art. Nonetheless, Konya teaches a sender transferring funds to a recipient such that the recipient can receive the funds from an ATM ('396, abstract; column 9, lines 25-37;

column 10, lines 28-42; column 11, lines 4-10 and 60-65), while Berg et al. disclose a terminal writing data to a smart card such as the source of currency transferred into the smart card ('343, column 8, lines 38-56). In the context of Konya the source of the currency is the account of the sender ('396, abstract) and the "terminal" is the ATM which the recipient uses to receive the funds ('396, abstract; figure 1) . To one of ordinary skill, the account code would be a representative of the sender account (e.g. last four digits of the account or some other code such that the sender's account is not compromised). Further, as the sender's bank computer system ('396, figure 1, items 12 and 14; column/line 9/49-10/15) has access to this [account] information, to one of ordinary skill, it would also be the computer system that provides the account code to the terminal of Berg et al. in order to write it [sender account information] to the card as the source of funds ('343, column 8, lines 40-45) transferred into the card ('396, column 11, lines 10-48; '343, column 3, lines 35-47).

Claims 10-13, 26-29, 42-44 and 50-53

Claims 10-13, 26-29, 42-44 and 50-53 are rejected as being dependent on independent claims 1, 17, 34, and 45. Appellant has provided no argument specific to these claims.

Claims 30 and 65

Appellant is of the opinion that the prior art of Konya fails to disclose "loading payout funds, corresponding to at least a portion of a desired amount of money to be transferred from a sender to a recipient, in a payout account associated with a payout card". The Examiner respectfully disagrees. Konya teaches a sender inputting an amount to be transferred (column 10, lines 28-34), determining whether the sender's account balance is sufficient to cover the transaction (column 10, lines 35-40) and reserving this amount from the sender's account (column 11, lines 4-10) for later debiting (column 11, lines 60-65). When the amount of currency to support the transaction is *reserved*, the sender no longer has access to the funds as it is *reserved* for the purpose of debiting by the ATM computer system performing the "send" transaction. Otherwise, in the Konya teaching, a sender runs the risk of using funds to the point where the sender account balance no longer can support the transfer. Therefore, the Examiner is interpreting the prior art system as reserving the funds in a *reserved* or payout account, within the sender's account. This is similar to rental car companies who block off or reserve an amount on a renter's credit or debit card in order to guarantee payment.

Konya also inherently teachings Appellant's "loading" step as in order to allow the recipient to be able to access funds, the sender must have a corresponding amount of money present in the sender account (column 10, lines 27-30). Hence, at some point in the past the money had to have been loaded (or deposited) into the sender account.

Appellant stresses that Konya cannot read on claim 1 because according to Konya money is not actually transferred from sender to recipient. This is an inaccurate depiction of the prior art. For example, Konya explicitly recites "The system allows currency to be ***immediately transferred*** from a first account to a ATM" (abstract), "The ***transferred*** currency can then be retrieved using a second ATM" (abstract), and "the system will also account for standard exchange rates when currency is ***transferred*** to different countries." (column 9, lines 35-37). Although Konya does not teach transferring funds *into a recipient's bank account* (column 6, lines 35-40; column 9, lines 25-30), Konya does characterize the act of a sender identifying an amount to be made accessible to a recipient over an ATM network as "transferring" (abstract; column 9, lines 30-38).

Appellant further contends that Konya fails to teach Appellant's claimed method as claim 1 is directed to a *receive* transaction (Appeal Brief, page 11, section 1, lines 1-5). However, the receiver is not the entity "loading funds.... into a payout account", hence Appellant is not accurately describing the claimed method.

Regarding claims 31 and 34, the Konya teaches "requesting via a transaction initiating terminal that the host computer system load payout funds corresponding to at least a portion of a desired amount of money to be transferred..." as Konya teaches using an ATM machine to identify an amount to be reserved from a sender account to a reserved or payout account (column 10, lines 28-41; column 11, lines 1-10).

Claims 57 and 63

Konya teaches that in order for a recipient to receive funds made available by a sender (abstract), the recipient has to provide a card usable at an ATM and a PIN (column 11, lines 10-48). If the card/PIN combination is not validated then the recipient cannot access the funds (column 11, lines 20-26). Further, this information is only known by the issuer of the card (e.g. Bank of America, American Express), hence the second computer system (or first computer system if the sender and recipient accounts are kept at the same bank) (column 9, lines 48-65) receives the card/PIN information in order to determine validity.

Claims 58 and 64

Konya teaches that in order for a recipient to receive funds made available by a sender (abstract), the recipient has to provide a card usable at an ATM and a PIN (column 11, lines 10-48). If the card/PIN combination is not validated then the recipient cannot access the funds (column 11, lines 20-26). Further, this information is only known by the issuer of the card (e.g. Bank of America, American Express), hence the second computer system (or first computer system if the sender and recipient accounts are kept at the same bank) (column 9, lines 48-65) receives the card/PIN information in order to determine validity. Konya is directed to ATM to ATM currency transfers, hence in the context of Konya the agent location is the bank that owns the ATM.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Calvin Loyd Hewitt II

Conferees:

Vincent Millin

Andrew Fischer